R.S.A No.64 of 2005

HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

R.S.A No.64 of 2005

Date of decision : 29.01.2007

Dalbir Singh .....Appellant

versus

Danna .....Respondent

CORAM : HON'BLE MR. JUSTICE HEMANT GUPTA.

Present : Mr.Rakesh Gupta, Advocate for the appellant.

* * *

ORDER

HEMANT GUPTA, J. (Oral)

The defendant in second appeal aggrieved against the judgment and decree passed by the Courts below, whereby suit for possession of land measuring 31K-14M, on the basis of a title, was decreed.

The defendant was alleged to be in unauthorized possession of the suit land and thus, the plaintiff claimed a decree for possession. The defendant claimed that he is in adverse possession of the suit property and that earlier the plaintiff's suit was dismissed under Order 9 Rule 8 of the Civil Procedure Code and, therefore, the present suit is barred under Order 9 Rule 9 of the Civil Procedure Code.

Both the Courts below have found that from the evidence on record, it has been found that the possession of the defendant over the suit property was permissive and not hostile. To return such a finding, the Courts below have relied upon the statement of Virsa Singh, witness of the defendant, who has appeared as DW-2. Since the possession of the defendant was found to be permissive at inception, it was found that the

defendant cannot raise a plea of adverse possession. While considering the bar under Order 9 Rule 9 of the Civil Procedure Code, it has been found that neither the subject matter nor the parties were the same. It has been found that in fact the defendant has purchased a share from a co-sharer vide sale deed dated 20.12.1993 and, therefore, the adverse possession has merged with the right of an owner and it gives a fresh cause of action to the plaintiff.

Learned counsel for the appellant has argued that in the previous suit, plaintiff has claimed possession of the defendant as adverse since the year 1987 and, therefore, by the time the present suit was filed, it is barred by limitation. However, the said plea is not tenable for the reasons that the defendant is purchaser from a co-sharer in the year 1993 and, therefore, as a co-sharer, it is not open to him to assert adverse possession.

I do not find any illegality or irregularity in the findings recorded by the learned Courts below, which may raise any substantial question of law in the second appeal for consideration of this Court.

Dismissed.

(HEMANT GUPTA)
JUDGE

January 29, 2007
**mohinder*